



In Opposition to Committee Bill No. 5

March 18, 2016

Position: PhRMA respectfully opposes Committee Bill No. 5 because it taxes Schedule II through V controlled substances sold to health care providers in the State, will be extremely difficult to implement, and could have a chilling effect on the biopharmaceutical industry in Connecticut.

Committee Bill No. 5 will be extremely difficult if not impossible to implement.

This legislation would require each manufacturer or wholesaler of a controlled substance to pay a surcharge of 6.35% of gross receipts for any controlled substance lawfully sold on or after January 1, 2017, to 1) a pharmacist or pharmacy 2) a physician, dentist or veterinarian, 3) a person in charge of a hospital, incorporated college or scientific institution 4) a person in charge of a laboratory, or 5) a registrant, as defined in subdivision (47) of section 21a-240 of the general statutes, who is permitted to purchase and possess a controlled substance under federal and state law. The proposal exempts medicines for Medicare Part D beneficiaries or to beneficiaries of any other program under which a controlled substance is a covered benefit that is exempt from taxation.

First and foremost, often prescription drug manufacturers sell their medicines to a wholesaler that then distributes the medicine to states. Often, a manufacturer will not know the state in which the drug was prescribed and in many cases would not know where the patient received the medicine (e.g., pharmacist, hospital, etc.). Also, the manufacturer, in most cases would not know whether the ultimate patient was a Medicare Part D beneficiary or other beneficiary whose covered benefit was exempt from taxation. PhRMA cannot envision a circumstance where a manufacturer would know all the circumstances under which a Connecticut resident received his or her product nor whether that patient was covered by a program exempted by this law. How, then could the manufacturer be able to track the product for which the State is requiring reporting and taxes?

PhRMA opposes any additional tax on our industry. Our companies contribute substantially to the Medicaid program in the form of rebates, the Medicare Part D program by filling in the donut hole, and pays fees under the Affordable Care Act.

Pharmaceutical manufacturers paid more than **\$388 million** in rebates on drugs used by Connecticut Medicaid beneficiaries in 2014, of which more than **\$194 million** was the State's share.

Since the 1990s, as a condition of a drug being covered by Medicaid, drug manufacturers pay a rebate to the states and CMS based on a statutory formula. The Affordable Care Act (ACA):

- 1) increased the minimum rebate from 15.1% to 23.1%;
- 2) extended the Medicaid rebate to patients receiving their Medicaid benefit through managed care organizations (before ACA it only applied to medicines purchased for fee-for-service population);
- 3) provided for the expansion of Medicaid; and
- 4) changed the calculation of the average manufacturer price (AMP), the price used to calculate the rebate amount, which resulted in an increase in the amount of the rebate

While the Medicaid rebate was instituted to ensure Medicaid patients have access to prescription drugs, these medicines have been increasingly subjected to tight utilization management controls. Also, the Congressional Budget Office (CBO) has said that Medicaid price controls distort the market, resulting in higher prices elsewhere.

The Affordable Care Act - Industry Fee:

The annual industry fee imposed on the biopharmaceutical industry to help fund the ACA ranges from \$2.5 billion to **\$4.1 billion** annually. The fee is non-deductible and is allocated across the industry based on the company's relative market share of applicable sales to government programs.¹

Filling the Medicare Donut Hole:

With respect to Medicare Part D, which significantly expanded comprehensive drug coverage for seniors in 2006, standard coverage included a “coverage gap” or “donut hole” followed by catastrophic coverage for those with the highest drug spending. Beginning in 2011, the coverage gap is phased out, thanks to a 50% discount on brand name drugs provided by biopharmaceutical manufacturers, at a cost of **\$41 billion** over 10 years.

PhRMA is deeply concerned about the competitiveness of the Connecticut business environment given its members' economic activities in the state.

The biopharmaceutical industry is a major economic player in Connecticut—the economic activities of PhRMA members and other biopharmaceutical companies directly supported nearly 13,000 jobs within the state in 2011. The industry also supported more than 45,000 jobs outside the biopharmaceutical sector (e.g., advertising agencies, construction companies, information technology companies, etc.), for a total of 58,058 jobs. In 2011, the biopharmaceutical sector directly generated \$8.9 billion in economic output in Connecticut, and supported another \$7.7 billion through its vendors, suppliers and through the economic activity of its workforce. It is therefore very concerning that the Connecticut legislature is considering a bill that singles out the biopharmaceutical industry and makes the cost of doing business higher than other industries.

For these reasons, PhRMA opposes Committee Bill No. 5, which taxes manufacturers of controlled substances.

¹ PWC Alert 2014-3, Stay informed: Pharmaceutical and Life Sciences Industry Alert,” available at: <<http://www.pwc.com/us/en/health-industries/pharma-life-sciences/assets/pwc-pls-annual-fee-ppaca.pdf>>.